IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.A.No.284 of 1999

Judgment reserved on 14.3.2007

Date of decision 22.3.2007

State of H.P. Appellant

Versus

Ramesh Kumar Khaneja and anr. Respondents

Coram:

The Hon'ble Mr. Justice V.K.Ahuja, Judge.

Whether approved for reporting?[1]

For the appellant : Mr.Ashutosh Burathoki, Addl. Advocate General.

For the respondents: Mr.R.K.Gautam, Senior Advocate, with Mr.Anurag Sharma, Advocate.

V.K.Ahuja, J.

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This is an appeal filed by the State of Himachal Pradesh against the judgment of the court of learned Special Judge, Solan, whereby the respondents have been acquitted of charges under Sections 467, 468, 471, 420, 120-B IPC and Section 13(1)© and (d) punishable under Section 13(2) of the Prevention of Corruption Act..

Briefly stated the facts of the case are that respondent No.2 Ramesh Kumar Khaneja is a contractor who was awarded a contract for laying of pipes. He was required to lay 1693 meters pipe in different depth ranging between 20 cm to one meter. It was alleged that the pipe was not laid within the required depth and the payment was obtained by respondent No.2 wrongly by forging the documents in connivance with Saudagar Chand the then S.D.O. respondent No.1 (now dead) and the then J.E. now respondent No.3. A sum of Rs.17980/- was released to respondent No.2 in connivance with two other accused persons. A case was registered and challan was filed before the learned Special Judge

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[1] Whether reporter of local papers are allowed to see the judgment ? Yes.

who tried the respondents under the above mentioned sections, resulting in their acquittal.

I have heard Mr. Ashutosh Burathoki, learned Additional Advocate General, for the appellant and Mr.R.K.Gautam Senior Advocate assisted by Mr.Anurag Sharma, Advocate, for the respondents and have gone through the record.

The submissions made by the learned Additional Advocate General for the State were that there are no allegations that 1693 meters pipe was not laid as required under the contract but rather it was laid in excessive in all 2540 meters and the remaining pipe was laid by the Department. It was submitted that the depth was measured at several places with the help of jhabbal and it was found that when the jhabbal struck with the pipe by sound only the length was measured and it was concluded that the pipe had not been laid up to required depth of one meter. It was not disputed by learned Additional Advocate General during the course of arguments that this striking of jhabal can be even with the stone which may give a similar sound. Thus it was submitted on behalf of the State that though this crude method of measurement of depth was adopted, but the statement of the witness who took measurement at different places clearly shows that the pipe was not laid at a depth of one meter below the surface as required by the agreement and the findings to the contrary of learned Special Judge are liable to be reversed.

On the other hand, learned counsel for the respondents had submitted that a perusal of statement of PW-1 Pratap Singh, fitter will show that at some places there were crop sown, at some places only digging was done and at some places the digging was not possible due to the water and it is only an inference drawn by the so called expert that the pipe was not laid at the required width and his report suffers from various infirmities and cannot be relied upon.

A perusal of the record shows that after registration of the case, PW-18 Sh. Ram Kumar , Dy. Superintendent of Police associated PW-1

Partap Singh, Fitter of the Department along with PW-3 Ishwar Dutt to ascertain the actual depth of the pipe laid under ground. According to the evidence the depth was ascertained by striking the jhabbal at various places and after making measurement, the Chart Ex.PA was prepared by PW-1 Partap Singh. According to this Chart Ex.PA 2828 meters length of pipe was found laid on the spot out of which 2540 meters was laid by the contractor and 245 meters by the Department. The fact remains that the pipe laid was excessive of the total length agreed to be laid and shown in the blue print. The depth at various places where jhabbal was applied has been shown in detail in the Chart Ex.PA. Accordingly it was found that the depth was not upto one meter at various places. However, it is clear that the method adopted by PW-18 in measuring the depth can be said to be a crude method adopted and the depth was only measured by an approximation. Instead of accepting this method, the pipe could have been taken out or the land at some places could have been dug till the pipe was visible only at some places and if it was found that required depth was not there, the respondent No.2 could have been tried for not properly laying the pipe up to the required depth. The charge cannot be said to have been proved in case the required depth was not maintained as a whole. It could have been proved in case the required depth was not there at some of the places. It would have given an exact version that the required depth was not there at the time of laying down of the pipe. But the method adopted was only by way of approximation.

It was also observed by learned trial court that the loose clay of dug up land can easily be washed away by flow of rain water than the earth in the natural shape. At some places there was maize crop standing in the fields, therefore the depth could not be measured. There is no charge as against respondent No.2 that he has cheated the Department by not laying the agreed length of pipe as per the agreement but the charge only is in regard to the depth which does not stand established. The reasoning given by learned trial court was that the evidence in regard to actual depth

is shaky and doubtful. The said reasoning is not without any substance but is based upon the evidence placed on record. It has also come up in evidence that some of the work was not measured by respondent No.3 but was measured by previous J.E. for which respondent No.2 was also being tried.

It follows from above discussion that the findings recorded by the learned trial court in acquitting the respondents cannot be said to be perverse or based upon wrong appreciation of evidence and those findings do not call for any interference by this Court and as such are liable to be affirmed. The appeal filed by the appellant is dismissed.

March 22,2007(g) **(V.K.Ahuja),J.**